

Attachment 11: News Articles Re: Billy Ray Irick Execution

Medical Expert: Billy Ray Irick Was Tortured During TN Execution

- **The Tennessean** - Tennessee execution: Billy Ray Irick tortured to death, expert says in new filing
- **Nashville Scene** - Medical Expert: Billy Ray Irick Was Tortured During Execution

<https://www.tennessean.com/story/news/crime/2018/09/07/tennessee-execution-billy-ray-irick-tortured-filing/1210957002/>

Tennessee execution: Billy Ray Irick tortured to death, expert says in new filing

By Adam Tamburin and Dave Boucher, September 7, 2018

Editor's note: Reporter Dave Boucher was one of seven state-required media witnesses at Irick's execution.

Billy Ray Irick felt searing pain akin to torture before he died in a Tennessee prison in August, but steps taken in carrying out his execution blocked signs of suffering, according to a doctor who reviewed information about the lethal injection.

In new court filings entered late Thursday amidst an ongoing legal challenge of Tennessee's lethal injection protocol, Dr. David Lubarsky said statements from people who witnessed the execution indicated the controversial drug midazolam failed to ensure Irick could not feel pain during his death.

As a result, the death row inmate "experienced the feeling of choking, drowning in his own fluids, suffocating, being buried alive, and the burning sensation caused by the injection of the potassium chloride," Lubarsky wrote in the filing.

The document also says the state did not follow its own lethal injection protocol, raising questions about whether executioners ever intended to ensure Irick was unable to feel the pain caused by the second and third lethal injection drugs.

Irick and 32 other death row inmates sued the state this year arguing that Tennessee's new protocol for lethal injections would subject them to pain so intense it would violate the U.S. Constitution. They questioned the use of midazolam, the first of the three drugs the state administers during executions.

Lubarsky, a Florida doctor, testified for the inmates during a two-week trial in July. He said midazolam, which is supposed to render inmates unconscious and unable to feel pain, doesn't work as intended. He said midazolam sedates inmates but does not stop them from feeling the effects of the other two drugs, vecuronium bromide and potassium chloride.

Lubarsky and other medical experts are the backbone for the inmate's appeal. The case is not about whether the death penalty is constitutional, attorneys for the death row offenders wrote in the 390-word brief. It's about what the deadly drugs do to a body, and whether Tennessee citizens should approve of that likely tortuous outcome.

"This case is about whether it is constitutional to inject a human with a small bottle of acid—which will destroy the lining of their lungs and cause them to drown in blood—and then to inject them with a paralytic that will leave them conscious but expressionless—unable to speak or scream—feeling as if they are buried alive, and finally to stop their heart with an injection that will, in their last minute of life, cause them to chemically burn alive," wrote Kelley Henry and other federal public defenders working on behalf of the death row inmates.

Davidson County Chancery Court Judge Ellen Hobbs Lyle agreed Lubarsky and other experts were well qualified, but she rejected their arguments in ruling against the inmates.

Lyle said whatever pain the inmates felt did not last long enough to count as unconstitutional torture, a stance blasted by U.S. Supreme Court Justice Sonya Sotomayor in an opinion issued hours before Irick's death.

The remaining death row offenders continue to pursue their appeal of Lyle's ruling even though no court stopped Irick's execution.

The Tennessee Department of Correction, represented by the Office of the Tennessee Attorney General, argued it is following the law and using drugs available to carry out the required punishment for death row offenders. Department officials noted during trial that the U.S. Supreme Court previously allowed executions using midazolam to proceed, arguing the usage is now case law.

In the latest filing though, Henry and the other attorneys argue that case law is not settled. They point to new and more expansive medical evidence, presented to Lyle during the trial, that has never been considered by the full Supreme Court.

They also blast the state's arguments in the new filing, writing: "Defendants' repeated mantra, barely acceptable from a teenager, is that — 'all the other states are doing it, so it must be ok.'"

Executioners never prepared second dose of midazolam, records show
The protocol for how the state puts an inmate to death is very specific.

It requires the state prepare primary and back-up syringes for each of the drugs used in the lethal injection.

However, documents obtained by the inmates' attorneys show executioners did not prepare a back-up dose of midazolam. The report says executioners only prepared the one dose of midazolam used at 7:28 p.m., essentially the same time Irick's execution began.

The protocol requires the executioner to inject the midazolam into a tube that runs into the condemn's arm. After some time, the warden -- who is in the execution chamber -- is required to check to see if the condemned is conscious.

If the condemned is not conscious, the state protocol requires injecting a second dose of midazolam.

Riverbend Maximum Security Institute Warden Tony Mays conducted the consciousness check: he brushed Irick's eyelids, yelled his first name twice and appeared to grab his shoulder. If he had determined Irick was conscious though, it's unclear if the state could have or would have prepared another midazolam syringe.

"If Mr. Irick had responded to the consciousness assessment or there had been problems with the IV apparatus, the execution team would not have been prepared to carry out the contingency procedures in the manual," Henry and the attorneys write.

"Defendants' failure to follow the procedures in the manual indicates that the protocol is meaningless for purposes of Defendants' carrying out an execution and therefore creates a substantial risk of severe pain and suffering for Plaintiffs," the document says.

Taping Irick's hands hid signs of pain, expert says

Throughout his statement, Lubarsky said witness statements from Irick's execution supported the inmates' legal arguments. Lubarsky said he was convinced "to a reasonable degree of medical certainty" that Irick was not properly anesthetized during his execution. Any inmate not properly rendered unconscious and insensate would feel the "torturous effects of the lethal injection process," Lubarsky said.

Witnesses described Irick choking, snoring, gulping and gasping for air as the drugs were administered. They also said he jolted and appeared to push against the restraints at one point.

Lubarsky noted that Irick's hands were taped to the gurney during the execution. His fingers were wrapped with a tape-like substance that prevented movement and limited visibility of the majority of his hands.

Lubarsky said the tape blocked prison officials from seeing important signs that Irick was aware of his surroundings throughout the execution.

"A trained observer knows that if a patient moves his fingers or hands that is a clear indicator that that they are not anesthetized," Lubarsky wrote. "The taping of Mr. Irick's hands affirmatively prevented the Warden from observing an important indicator that Mr. Irick was not anesthetized."

Tennessee courts denied all of Irick's legal requests, and appear poised to do the same ahead of the state's next execution.

The Tennessee Supreme Court recently evoked a rare legal move to set the schedule for the lethal injection challenge within the Court of Appeals. The schedule is condensed, leaving far less time for attorneys to prepare their case compared to a typical appeal.

State Supreme Court Justice Sharon Lee admonished her colleagues after they set the schedule, calling it a "rocket docket" that jeopardized inmates' chances for a fair trial.

In the new filing, attorneys ask the court to delay the appellate process.

Edmund Zagorski, 63, is scheduled for execution on Oct. 11. He was convicted in 1984 of robbing and shooting John Dotson, of Hickman County, and Jimmy Porter, of Dickson, before slitting their throats, according to Tennessean archives.

<https://www.nashvillescene.com/news/pith-in-the-wind/article/21021361/medical-expert-billy-ray-irick-was-tortured-during-execution>

Medical Expert: Billy Ray Irick Was Tortured During Execution

Doctor says Irick experienced the feeling of suffocating, burning and being buried alive

By Steven Hale, September 7, 2018

One of the nation's leading anesthesiologists says in a new court filing that he has concluded "to a reasonable degree of medical certainty" that Billy Ray Irick experienced "torturous" pain when he was executed last month.

Based on the accounts of media witnesses (including this Scene reporter), Dr. David Lubarsky asserts that Irick was "aware and sensate during his execution and would have experienced the feeling of choking, drowning in his own fluids, suffocating, being buried alive, and the burning sensation caused by the injection of the potassium chloride."

The state put Irick to death on Aug. 9 for the 1985 rape and murder of 7-year-old Paula Dyer in Knox County. It was the state's first execution since 2009, as well as its first using a controversial new lethal injection protocol — the same protocol the state intends to use to execute Edmund Zagorski on Oct. 11.

The three-drug cocktail — consisting of midazolam, vecuronium bromide and potassium chloride, which are all injected one at a time — prompted a lawsuit from more than 30 death row inmates, including Irick, who argued it would amount to torture. Lubarsky, a Florida doctor who has researched lethal injection, testified as an expert witness during the trial over the lethal drugs earlier this year. He told the court there was no doubt that midazolam, a sedative, would not prevent Irick from feeling immense pain during his execution. A Nashville judge upheld the protocol in July.

The death row prisoners appealed, but Gov. Bill Haslam, the Tennessee Supreme Court and the Supreme Court of the United States all denied Irick's requests for a stay of execution. Still, in a blistering dissent, U.S. Supreme Court Justice Sonia Sotomayor argued that Irick was certain to experience excruciating pain.

"In refusing to grant Irick a stay, the Court today turns a blind eye to a proven likelihood that the State of Tennessee is on the verge of inflicting several minutes of torturous pain on an inmate in its custody, while shrouding his suffering behind a veneer of paralysis," she wrote.

In conclusion, Sotomayor added: "If the law permits this execution to go forward in spite of the horrific final minutes that Irick may well experience, then we have stopped being a civilized nation and accepted barbarism. I dissent."

In the new filing, Lubarsky says the physical behavior described by witnesses to Irick's execution — choking, moving his head and straining his forearms against the restraints — were "signs that Mr. Irick was not in a plane of surgical anesthesia during his execution."

"This is important because an inmate who is not placed in a plane of surgical anesthesia is not protected from

the subsequent torturous effects of the lethal injection process," Lubarsky says.

Lubarsky also highlights the fact that Irick's hands were taped to the gurney.

"A trained observer knows that if a patient moves his fingers or hands, that is a clear indicator that they are not anesthetized," he says.

"The taping of Mr. Irick's hands affirmatively prevented the Warden from observing an important indicator that Mr. Irick was not anesthetized," Lubarsky later adds. "The taping of an inmate's hands is not necessary, because the inmate's wrists are restrained, which is more than sufficient to prevent the inmate from pulling out the catheter."

A Nashville judge blocked an autopsy from being performed on Irick's body, citing Irick's expressed religious beliefs.

In a new legal challenge filed last month, death row prisoners argue that Irick had been tortured to death and state that they would rather be executed by firing squad.

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Witness to an execution: The death of Billy Ray Irick

Billy Irick was executed Thursday night at Riverbend Maximum Security Institution. I'd never seen a man put to death before.

Nashville — Thirty-three years after he raped and killed a little Knoxville girl, Billy Ray Irick took his last breaths in Tennessee's execution chamber.

And I watched.

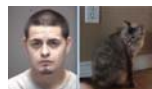
As a WBIR journalist, I was among seven media representatives picked to witness the state's first exec in nine years. Counting Irick, the state has only killed seven death row inmates since 1960.

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But there are several more executions set in the Volunteer State in the coming months, assuming courts don't stop them.

More: [Timeline leading to Irick's execution](#)

My colleagues kindly asked me after it was over about 9 p.m. tonight if I was OK.

I am. I suppose it's because I've been a reporter and editor a long time and am used to things that are shocking, sad, alarming, disturbing. It goes with the job.

I hope honestly that I have not lost my ability to feel.

Another reason perhaps I was not shaken is because the method of killing an inmate at Riverbend Maximum Security Institution in Nashville is very clinical, very medical.



The final photograph taken of Kathy Jeffers and daughter Paula Dyer in 1985.

Gasps and snores

We were led into a small, concrete-block room off the execution chamber. Blinds hung down across windows that looked into the chamber. They kept the lights off in our room for about 40 minutes.

More: [Remembering the crime that led to Irick's death sentence](#)

More: [Former court justice expects Irick will be executed](#)

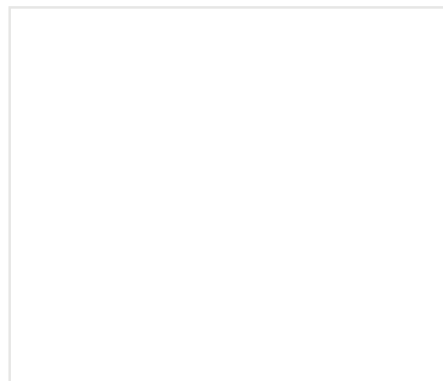
As we waited in darkness, prison workers on the other side laid Irick on a gurney, strapped him down, put tubes in his arms. About 7:25 p.m., men in the chamber raised the blinds, revealing Irick, 59, stretched out before us, blinking and staring up at the ceiling.

He never looked around. He wore yellow or cream cotton prison clothes and socks.

Warden Tony Mays stood by Irick, his back to us. Mays asked Irick if he wanted to say anything.

Irick paused, then said, "I just want to say I'm really sorry...and that's it."

That was the signal for the first drug - midazolam, a sedative - to be injected into the tube. By 7:29 p.m. he was snoring, getting progressively louder. His belly, fairly large, went up and down.



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At one point a couple minutes into the procedure, he jerked up and gasped. His eyes remained closed. Heavy breathing and snoring continued for the next four minutes. I noticed his skin appeared to turn a darker.



The warden, dressed in a black suit and flanked by an assistant, leaned over at 7:34 p.m. and shouted him twice: "Billy! Billy!" He ran his hand over his face.

Irick never responded. He kept snoring, taking deep breaths and then exhaling so that the ends of his mustache fluttered in the air.

More: [Detective recalls investigation in Paula Dyer's killing](#)

The next drugs were administered - a paralytic and then something to stop his heart.

Whenever it was time to administer the next drug, a slot by Irick's head would open and the hand of someone on the other side of the wall would set out what appeared to be a plastic container or cup on shelf.

Gradually his breathing slowed and then stopped altogether.

By 7:37 p.m. he appeared dead to me. He wasn't moving and his skin had gone purple. Warden Mays his assistant stood at attention watching his body.

Off to their right, I could just catch a glimpse of other witnesses -- family members of murder victim Paula Dyer -- sitting behind the glass of another chamber. They appeared to stare steadily at Irick.

Several minutes ticked by on the digital clock hanging on the wall facing us. Irick didn't move. Still the warden stood by the inmate, rocking slowly back and forth on his feet.



1985 footage of the Exeter Ave. home where 7-year-old Paula Dyer was raped and murdered in Knoxville.

Abruptly at 7:46 p.m. the warden pulled the blinds down. We could hear the sound of tape being remc

<https://www.wbir.com/article/news/crime/witness-to-an-execution-the-death-of-billy-ray-irick/51-582015774>

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The warden said on a microphone broadcast into the witness chamber: "That concludes the execution Billy Ray Irick. Time of death was 7:48 p.m.

"Please exit at this time."



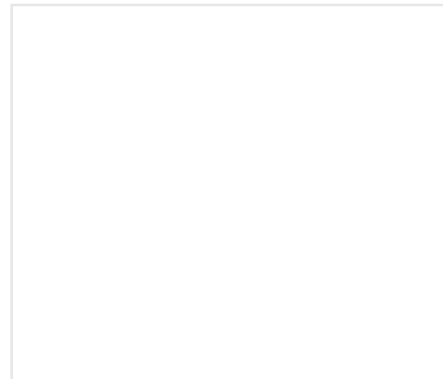
John North explains his account of the Aug. 9 execution of Billy Ray Irick to media. (Photo: Leslie Ackerson)

Questions and answers

It all seemed choreographed, staged, controlled.

Inside the witness chamber, we all said very little, waiting to be allowed outside again. I saw no emotion although it's certainly possible some people were dealing with feelings internally.

The seven of us made the long walk out of the prison's administrative offices to the parking lot, to face dozen or so cameras of other journalists, waiting under a tent to hear what we had to say. Bright lights shone in our faces as we addressed questions.



Kathy Jeffers, mother of Paula Dyer.

That was as foreign and odd to me as watching the execution.

After 33 years, Irick finally paid what a Knox County jury said was the proper price for raping and killing 7-year-old Paula. If no one claims his body, perhaps he'll end up in a pauper's grave.

I'll be curious to see how I feel as the days progress. But right now, some four hours after it happened writing this story in the middle of the night, I'm thinking more about Paula.



Childhood photo of Paula Dyer, the 7-year-old raped and murdered by death row inmate Billy Irick in 1985.

Her mother told us she was a genuinely sweet little girl who cared about others and loved to make friends. She even cared about Billy Irick, who had babysat her many times before he inexplicably attacked her on her parents' bed the night of April 15, 1985, while they were gone from the house.

So many questions linger tonight that will never be answered. Such a senseless thing -- him murdering a child.

Watching Irick die tonight resolved none of those questions. Some people have told us at WBIR that Irick should have been executed long ago, that he didn't deserve to live as long as he did.

He's gone now. I'll leave it for others to decide if justice was served.

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